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court should administer such relief as appears to be proper in the particular case.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 171 et seq.; 8 Va.-W. Va. Enc. Dig. 873.]

Suit by Uriah Waggoner and wife against Barbara Echard. From decree for plaintiffs, defendant appeals. Affirmed.

Jos. A. Glasgow, of Staunton, for appellant.

John M. Colaw, of Monterey, and *Timberlake & Nelson* and *L. Travis White*, all of Staunton, for appellees.

BRYAN *v.* COMMONWEALTH.

Nov. 20, 1919.

[101 S. E. 316.]

Criminal Law (§ 201*)—Former Conviction for Same Offense in Mayor's Court.—Acts 1918, c. 388, changing the original prohibition statute, especially Acts 1916, c. 146, §§ 24, 27, confer upon the mayor of a city concurrent jurisdiction with the circuit court to try a defendant for the unlawful transporting of intoxicating liquors along one of the city streets, and his judgment therein bars a second prosecution therefor in the circuit court by virtue of Bill of Rights, § 8, which ordains that no man shall "be put twice in jeopardy for the same offense."

Sims, J., dissenting.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 183.]

Appeal from Circuit Court, Rockingham County.

Henry C. Bryan was convicted of unlawfully transporting liquor along one of the streets of the City of Harrisonburg, and he brings error. Judgment reversed.

Charles A. Hammer, of Harrisonburg, for plaintiff in error.

The Attorney General and *Leon M. Bazile*, of Richmond, for the Commonwealth.

BROADDUS *v.* COMMONWEALTH.

Nov. 20, 1919.

[101 S. E. 321.]

1. Rape (§ 15*)—Attempt to Commit Rape.—The intent is an essential element of the crime of an attempt to commit rape.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 627.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

2. Indictment and Information (§ 88)—Allegation of Intent.—The evil intent, being an element in every crime, must always be in some way alleged; but when, in the nature of the individual case, the intent is a part of the acts alleged, it need not be separately stated.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 411.]

3. Indictment and Information (§ 110 (1)*)—Statutory Terms.—When an indictment is based on a statute, the statutory terms must be followed.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 413.]

4. Indictment and Information (§ 110 (6)*)—Rape (§ 33)—Sufficiency of Indictment Charging Attempt.—Indictment charging an assault and "attempt to ravish and carnally know" the prosecutrix "against her will and by force," under Code 1904, § 3888, was not bad for failure to specifically allege intent to carnally know prosecutrix, since the act charged is in its nature evil, and therefore prima facie evil in intent, and since the indictment, in use of word "attempt," follows the statute, which does not make the intent affirmative or descriptively an element of the crime.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 411.]

5. Rape (§ 33*)—Sufficiency of Indictment Charging Attempt.—Indictment charging attempt to commit rape held sufficient as against objection that it did not sufficiently charge the acts done towards the commission of the offense.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 631.]

6. Rape (§ 53 (1)*)—Sufficiency of Evidence of Intent.—In prosecution for attempt to commit rape, evidence held to support verdict in finding existence of a felonious intent on part of accused.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 629.]

7. Criminal Law (§ 742 (1)*)—Credibility of Witnesses.—The credibility of witnesses in a prosecution for attempted rape was solely for jury.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 73.]

8. Rape (§ 57 (1)*)—Attempt to Commit—Failure to Make Outcry or Complain.—In prosecution for attempt to commit rape failure of prosecutrix to make outcry at time of alleged offense, and to make complaint until return of her parents on the afternoon of the day of alleged offense, was not evidence per se of the falsehood of her evidence, where her threat to make outcry had caused accused to release her and leave house, and where she was "so frightened that she didn't know what to do," and could not leave

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

house and make complaint because of the small children in her care.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 626.]

Error to Circuit Court, Page County.

John Broadus was convicted of an attempt to commit rape, and he brings error. Affirmed.

VIRGINIA HOT SPRINGS CO. *v.* LOWMAN.

Nov. 20, 1919.

[101 S. E. 326.]

1. Dedication (§ 58*)—Use of Toll Road for Other than Dedicated Purpose.—Where land was dedicated to a toll road company to provide a right of way to facilitate travel when the methods of travel in vogue were on foot, on horseback, or in vehicles drawn by animals, the fact that new methods of travel have been discovered and are in common use, for example, by automobile, does not create a new or different use from that for which the dedication was made.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 363.]

2. Easements (§ 51*)—Change of Use of Right of Way.—If a right of way depends solely upon the user, then the width of way and the extent of the user is measured by the character of the user, for the easement cannot be broader than the user, and a right of way acquired for one purpose cannot be used for another; but if the new use is in all respects of the same character and nature as the old, and the difference is in degree only, and no additional burden is put upon the servient estate, then the new use is within the prescriptive use.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 866.]

3. Dedication (§ 16 (1)*)—By Implication.—Dedication and acceptance of a public highway may be express or implied.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 353.]

4. Adverse Possession (§ 8 (2)*)—Land Dedicated for Toll Road Not Subject to.—Where a toll road was constructed under authority of statute, and the right to take tolls was granted to a private or semiprivate corporation, the road, when established, became a public road, and, when a dedication of the right of way was accepted, the rights of the public therein became fixed, and no title to any part thereof could be acquired by adverse possession.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 221.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.